

# **Contingency Contracting**

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## **Training**



**Protests,  
Claims,  
Disputes,  
and Appeals**

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***Agile Contracting Support...Anytime...  
Anywhere***



# Overview

- Key Points
- Protests
- Contract Claims
- Contract Disputes and Appeals
- Contract Settlements and Alternative Dispute Resolution





# Key Points

- Upon receipt of a protest, the contingency contracting officer (CCO) needs to act quickly and contact supporting legal counsel.
- To avoid distracting, time-consuming litigation, strive to resolve contract performance issues by mutual agreement with the contractor to avoid disputes and litigation.





# Protests

- Receipt of Protest ... The first 24 hours
  - Upon receipt, immediately contact/forward a copy of the protest document to legal counsel
  - Discuss allegations with assigned attorney and potential impact to the mission if delay of award is triggered
- Responding to a Protest ... The first 30 days
  - Timely assessment of the protest allegations is key
  - Government must submit its agency report due to the GAO and the protester(s) within 30 days
  - Protests are typically document (CCO Statement of Relevant Facts) intensive and time consuming





# Protests

- Responding to a Protest ... After 30 days
  - Protester has 10 days to file written response to the Government's agency report in the form of a legal brief
  - GAO will issue it's decision by day 100
- Protest before Award (FAR 33.104(b))
  - Contract normally cannot be awarded with authorization from the Head of the Contracting Activity (HCA)
- Protest after Award (FAR 33.104(c)(1))
  - Contract normally will suspended performance or terminate the awarded contract
  - HCA may authorize continuance of contract performance





# Contract Claims

- Contingency contracting produces an environment ripe for contractor claims – there's little to prevent it
  - Not every contractor request for relief is a “claim”
  - Strive to resolve issues by mutual agreement
  - Contact legal counsel for assistance and advice
  - Responding to contractor's claim can be time consuming
- Ace in the Hole: A CCO Final Decision (FAR 33.211)
  - Must be issued within 60 days after receipt of claim
  - Pursuant to the Disputes clause within the contract
  - May still result in a dispute by the contractor





# Contract Disputes and Appeals

- Contract disputes involve issues developing over time
  - In a contingency environment the challenge to assemble a sound contract record presents unique hurdles
  - Time honored practices to mitigate these challenges are:
    - Digital Camera - A picture is worth a thousand words
    - Personnel Turnover - Work with J-1 to ensure key witnesses, past and present, can be easily located
    - Contract Files and Related Documentation - Availability of sound contract documentation is vital, without it a case is seriously weakened
      - Considering developing electronic files and charts
      - Use your reach-back legal counsel to assemble the underlying record (i.e., "Rule 4 File") for contract appeals





# Contract Settlements and Alternative Disputes Resolution

- If a dispute cannot be resolved, the CCO may consider negotiating a settlement or using a more formal ADR procedure with the contractor
  - In either event the CCO should seek the assistance and support of legal counsel
  - Legal counsel are there to assist in negotiating settlements or pursuing ADR measures
- Timely agreements by both parties are more valuable to maintain a continuing business relationship with the contractor during a contingency





# Contract Settlements and Alternative Disputes Resolution

- Essential elements of an ADR include:
  - Existence of an issue in controversy
  - Both parties voluntarily participation in the ADR process
  - An agreement on alternative procedures and terms
  - Both parties have the desire and authority to settle
- If an ADR is used, a few tips to consider are:
  - Know your facts and stay focused on the objective
  - Develop an appreciation for the other side's view
  - Use simple, clear, and concise language
- An ADR can be applied for all or portion of a claim





# Contract Settlements and Alternative Disputes Resolution

- Continued Performance
  - If necessary, CO shall use the Dispute Clause at FAR 52.233-1 with its Alternate I
- Reminders
  - Dispute Clause at FAR 52.233-1
  - Breach of Contract Claim at FAR 52.233-4





# Summary

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